

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Rachel Elkins,)	CASE NO. 5:08 CV 1999
)	
Plaintiff,)	JUDGE PATRICIA A. GAUGHAN
)	
Vs.)	
)	
Michael J. Astrue,)	<u>Memorandum of Opinion and Order</u>
Commissioner of Social Security,)	
)	
Defendant.)	

INTRODUCTION

This matter is before the Court upon the Report and Recommendation of Magistrate Judge George J. Limbert (Doc. 17) recommending that the decision of the Commissioner be REVERSED and this matter be REMANDED to defendant for further proceedings. This is a social security appeal. For the reasons that follow, the Report and Recommendation is ACCEPTED.

STANDARD OF REVIEW

Federal Rule of Civil Procedure 72, which governs the matter herein inasmuch as timely

objections have been made to the Report and Recommendation, provides in part:

(b) Dispositive Motions and Prisoner Petitions.

...The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

As stated in the Advisory Committee Notes, "The term 'de novo' signifies the magistrate's findings are not protected by the clearly erroneous doctrine, but does not indicate that a second evidentiary hearing is required." citing *United States v. Raddatz*, 447 U.S. 667 (1980).

ANALYSIS

Defendant objects to the Magistrate Judge's conclusion that the ALJ erroneously rejected the opinion of plaintiff's treating physician. In addition, defendant objects to the Magistrate Judge's conclusion that the ALJ failed to properly consider plaintiff's fatigue and failed to properly analyze plaintiff's credibility.

The Court has reviewed the Magistrate Judge's Report and Recommendation and fully agrees with the conclusions reached therein. The Court agrees that the ALJ failed to either credit or properly reject the opinion of Dr. Brzezinski. In addition, the Court agrees with the Magistrate Judge that the ALJ failed to properly analyze plaintiff's fatigue and credibility. The Magistrate Judge's thorough Report and Recommendation is incorporated by reference as if fully rewritten herein.

CONCLUSION

For the foregoing reasons, the Report and Recommendation of Magistrate Judge George

J. Limbert is ACCEPTED. This case is REMANDED to the Commissioner of Social Security for further consideration consistent with this opinion.

IT IS SO ORDERED.

/s/ Patricia A. Gaughan
PATRICIA A. GAUGHAN
United States District Judge

Dated: 9/4/09